THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.5833 OF 2007

DATED: 22-03-2007

BETWEEN

Nune Naga Subrahmanyam,
S/o. Sankara Rao,
R/o. Kasulamara Street,
Munthavari Center,
Chirala Town,
Prakasam District
and another.

...PETITIONERS

AND

The Corporation Bank,
Rep. by its Authorized Officer,
Polimera Road, Chirala Town,
Prakasam District and another.

...RESPONDENTS

ORDER:

This writ petition has been filed seeking a Writ of Mandamus to declare the action of the respondents in insisting the petitioners to vacate from the house property bearing D.No.20.4.20, assessment 25686, Kasulamara Street, 19th Ward, Kotla Bazar, Munthavari Centre of Chirala Municipal limits admeasuring 124 square yards and building therein pursuant to possession notice dated 06.12.2006 issued by the first respondent as illegal and arbitrary.

2. Learned counsel for the petitioners submits that the father of the petitioners namely Nune Sankara Rao was a guarantor for advancing cash credit facility in favour of M/s. Naga Sai Silks represented by its Proprietor Vankayala Rama Krishna for a sum of Rs.1,50,000/- availed from the first respondent bank. He further submits that neither the borrower nor the

guarantor paid the amount due and payable to the first respondent bank. He further submits that the father of the petitioner appears to have given the aforesaid house property as security. He further submits that the father of the petitioners has got only life interest in the said property and the petitioners have vested reminder settled by way of registered Settlement Deed dated 10.05.1984. Therefore, the said property cannot be sold but the interest of the father of the petitioners alone can be alienated or sold.

Learned counsel for the petitioners further submits that as against the impugned notice dated 06.12.2006 issued by the first respondent bank the petitioners got issued a legal notice dated 03.01.2007 through their counsel stating that their father has got life interest but he has no saleable right or right to encumber the same in any manner as per the said registered settlement deed. It is stated that the respondents have considered the said notice and gave a reply dated 07.01.2007.

3. I have perused the legal notice dated 03.01.2007 got issued by the petitioners to the first respondent. There is no specific plea in the said legal notice with regard to the creation of life estate in favour of the father of the petitioners and the vested reminder in their favour. Therefore, there was no occasion for the respondents to consider the question involved in the writ petition. There cannot be any dispute that whatever right the guarantor is having in the immovable property that much of the right alone can be alienated or transferred but after the death of the guarantor - father of the petitioners, if the petitioners have got vested reminder they would get back the said property even if is auctioned by the respondents.

4. As there is no specific plea with regard to the life estate and vested reminder in the aforesaid legal notice, the petitioner is directed to make a fresh representation before the respondents taking all the pleas that have been taken in the writ petition enclosing a copy of the registered settlement deed dated 10.05.1984 and if any such representation is filed, the respondents shall consider and dispose the same within three weeks from

the date of receipt of such representation.

The writ petition is accordingly disposed of. There shall be no order as to costs.

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V. ESWARAIAH, J

March 22, 2007
DSK